

# DEPARTMENT OF MENTAL HEALTH

## POLICIES AND PROCEDURES

*Subject:*  
**ACCOUNTING OF DISCLOSURES OF  
PROTECTED HEALTH  
INFORMATION (PHI)**

Effective Date:  
7/1/04

Policy Number:  
HIPAA 04-8

Review Date:  
1/5/2011  
Revision Date:  
2/3/2011

Entity responsible:  
Office of  
Legal Counsel

### 1. **Purpose:**

This policy provides instruction and guidance on how to provide an accounting of disclosures of protected health information (PHI) as required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Federal regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, other relevant Federal laws, and the Tennessee Code Annotated.

### 2. **Definitions:**

- 2.1 **Conservator/Co-Conservator:** A person or persons appointed by the court to provide partial or full supervision, protection, and assistance of the person or property, or both, of a disabled person.
- 2.2 **Correctional Institution:** Any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house, or residential community program center operated by, or under contract to, the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense or other persons held in lawful custody. Other persons held in lawful custody includes juvenile offenders adjudicated delinquent, aliens detained awaiting deportation, persons committed to mental institutions through the criminal justice system, witnesses, or others awaiting charges or trial.
- 2.3 **Guardian/Co-Guardian (of a Minor Child):** A person or persons appointed by the court to provide partial or full supervision, protection, and assistance of the person or property, or both, of a minor.
- 2.4 **Guardian *ad litem*:** A person meeting the qualifications set forth in Tenn. Code Ann. §34-1-107(c) [generally a lawyer licensed to practice in Tennessee] appointed by the court to represent the respondent (a minor or a person alleged to be a disabled person for whom a guardian/co-guardian or conservator/co-conservator is being sought); and to perform the duties set forth in Tenn. Code Ann. §34-1-107(d).

- 2.5 Health Oversight Agency: An agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe; or a person or entity acting under a grant of authority from or contract with such public agency that is authorized by law to oversee the health care system or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant.
- 2.6 (Legal) Custodian of a Minor Child: A person, other than a parent or legal guardian, who stands in *loco parentis* to the child or a person to whom temporary legal custody of the child has been given by order of a court.
- 2.7 Legal Representative: A legal representative can be one of the following:
- 2.7.1 The conservator of a service recipient or former service recipient;
  - 2.7.2 An attorney in fact for a service recipient or former service recipient under a power of attorney who has the right to make disclosures under the power;
  - 2.7.3 A parent of a minor child service recipient or former service recipient;
  - 2.7.4 A guardian of a minor child service recipient or former service recipient;
  - 2.7.5 A legal custodian of a minor child service recipient or former service recipient;
  - 2.7.6 A guardian *ad litem* of a service recipient or former service recipient for the purposes of the litigation in which the guardian *ad litem* serves;
  - 2.7.7 The treatment review committee for a service recipient who has been involuntarily committed;
  - 2.7.8 The executor or administrator (sometimes referred to as “personal representative”) of the estate of a deceased service recipient;
  - 2.7.9 A temporary caregiver of a service recipient under Tenn. Code Ann. §34-6-302; or
  - 2.7.10 The guardian of a service recipient or former service recipient as defined in the Uniform Veteran’s Guardianship Law at Tenn. Code Ann. §34-5-102.
  - 2.7.11 Please note that a care giver (also care provider), as defined in Tenn. Code Ann. §§ 37-5-501(1) and 71-3-501(1), is **not** included as a “legal representative”. By definition, a care giver (also care provider) is a person

or persons, an entity or entities, responsible for providing for the supervision, protection, and basic needs of a child, mostly with respect to child care agencies and children's services programs. A care giver is **not** authorized to act as a legal representative of a DMH service recipient.

- 2.8 Limited Data Set: PHI that excludes the following direct identifiers of the individual or relatives, employers, or household members of the individual: names; postal address information other than town or city, state and zip code; telephone numbers; fax numbers; electronic mail addresses; social security numbers; medical record numbers; health plan beneficiary numbers; account numbers; certificate/license numbers; vehicle identifiers and serial numbers, including license plate numbers; device identifiers and serial numbers; Web Universal Resource Locators (URLs); Internet Protocol (IP) address numbers; biometric identifiers, including finger and voice prints; and full face photographic images and any comparable images.
- 2.9 Minor Child: A child is defined at Tenn. Code Ann. (TCA) §33-1-101 as a person under eighteen (18) years of age BUT SEE TCA §33-8-202 that states if a child with serious emotional disturbance or mental illness is sixteen (16) years of age or older the child has the same rights as an adult with respect to, among other things, confidential information; AND SEE TCA §33-3-104 that lists a service recipient sixteen (16) years of age and over as one of the persons authorized to consent to disclosure of confidential information.
- 2.10 Protected Health Information (PHI): Individually identifiable health information [IIHI] which is information that is a subset of health information, including demographic information collected from an individual, and created or received by a health care provider, health plan, employer, or health care clearinghouse; and relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or there is a reasonable basis to believe the information can be used to identify the individual; and that is transmitted or maintained in electronic media, or any other form or medium. Specifically excluded from this definition is IIHI contained in education records covered by the Family Educational Rights and Privacy Act (FERPA; 20 USC §1232g) and IIHI contained in employment records held by a covered entity in its role as employer.
- 2.11 Service Recipient: A person who is receiving service, has applied for service, or for whom someone has applied for or proposed service because the person has a mental illness, serious emotional disturbance, or a developmental disability.

### 3. Policy:

- 3.1 Right to Accounting of Some Disclosures of PHI. A service recipient, former service recipient or appropriate legal representative each has a right to receive an

accounting of some disclosures of PHI made by the Department of Mental Health (DMH) or the Regional Mental Health Institute (RMHI), except for the disclosures of PHI listed in Section 3.3.

- 3.2 Time Period Covered. Pursuant to Federal law, the written request may be for an accounting of some disclosures for a period of time less than six (6) years, but no more than six (6) years prior to the date on which the accounting is requested (date of written request, not date of receipt of written request). Retention of the accounting is ten (10) years as noted in Section 3.10. The DMH/RMHI is not required to provide an accounting for disclosures that occurred prior to the HIPAA compliance date of April 14, 2003.
- 3.3 Disclosures That Do **Not** Go in the Accounting. The DMH/RMHI must provide a written accounting of some disclosures of PHI made during the period for which the accounting was requested, but the following disclosures do **not** go in the accounting:
  - 3.3.1 Disclosures made to carry out treatment, payment, and health care operations;
  - 3.3.2 Disclosures made to the individual to whom the protected health care information pertains;
  - 3.3.3 Disclosures made pursuant to a valid authorization given by the service recipient or former service recipient, parent(s) of a minor child service recipient as defined in Section 2, or legal representative as defined in Section 2, to release the PHI to another individual or entity;
  - 3.3.4 Disclosures made for the facility's directory, or to any person involved in the service recipient's or former service recipient's care;
  - 3.3.5 Disclosures made for national security or intelligence purposes, including protective services for the President of the U.S. or others authorized by 18 USC § 3056;
  - 3.3.6 Disclosures made to correctional institutions or law enforcement officials as provided in 45 CFR §164.512(k)(5) (i.e., correctional institution or a law enforcement official having lawful custody of an inmate(s) or responsibility to transport an inmate(s);
  - 3.3.7 Disclosures made as part of a limited data set as defined in Section 2; and
  - 3.3.8 Disclosures that occurred prior to the HIPAA compliance date of April 14, 2003.

- 3.4 Possible Disclosures That Would Go in the Accounting. The DMH/RMHI must provide a written accounting of some disclosures of PHI made during the period for which the accounting was requested, except for the disclosures of PHI listed in Section 3.3. Given the long list of disclosures that do **not** go in the accounting (see Section 3.3), the following are possible disclosures that would go in the accounting:
- 3.4.1 Disclosures made pursuant to a valid court order; and
- 3.4.2 Any other disclosures that might have occurred that are not listed in Section 3.3.
- 3.5 When Must Act; Extension of Time. The DMH/RMHI must act on the request for an accounting within (no later than) sixty (60) days after receipt of the written request. If the DMH/RMHI is unable to provide the accounting within the sixty (60) days, there may be only one (1) extension for a maximum of thirty (30) days provided that: (1) the requester is given a written statement of the reason(s) for the delay, and (2) the requester is given a date of not more than thirty (30) days later in time when the accounting will be provided.
- 3.6 Fees. The DMH/RMHI must provide the first accounting, in any twelve (12) month period, without charge. The DMH/RMHI may impose a reasonable cost-based fee for each subsequent request, by the same individual, for an accounting within the same twelve (12) month period provided that: (1) the requester is informed of the fee in advance, and (2) the requester has the opportunity to modify or withdraw the request in order to reduce or avoid the fee.
- 3.7 Temporary Suspension of Right for Certain Disclosures. If a health oversight agency as defined in Section 2, or law enforcement official, provides a written statement indicating that an accounting of disclosures that contains disclosures made to them is reasonably likely to impede their activities, the DMH/RMHI must temporarily suspend the right to an accounting of these disclosures for the time specified in the written statement from the health oversight agency or law enforcement official. The requester may be given an accounting of disclosures made to others within the guidelines covered in Section 3. At the conclusion of the temporary suspension, the requester should be given an accounting of disclosures to a health oversight agency or law enforcement official if there had been an accounting that did not include these disclosures due to the temporary suspension.
- 3.8 Content of Accounting. The DMH/RMHI must provide a written accounting of some disclosures of PHI (see Sections 3.3 and 3.4) which occurred during the six (6) year period, or shorter time period if requested, prior to the date of the request for an accounting. The accounting must also include disclosures to or by business associates of the DMH/RMHI. See Section 4.7 of this Policy for details on creating the accounting.

- 3.9 Disclosure Log. All disclosures of PHI must be recorded on a disclosure log kept in the service recipient's record. All accountings prepared and given to the requester must also be recorded in the disclosure log kept in the service recipient's record. See Section 4.8 for details on a disclosure log.
- 3.10 Documentation of Accounting; Retention. A copy of the written accounting must also be placed in the service recipient's record. Written accountings are to be retained for ten (10) years from the date of creation.

#### **4. Procedure/Responsibility:**

- 4.1 When request is received. When a DMH/RMHI employee receives a written request from a service recipient, former service recipient, or legal representative as defined in Section 2, for an accounting of disclosures of PHI, the employee must forward the request to the Privacy Officer/designee. If a verbal request is received, the employee must inform the individual that State law requires the request to be in writing and submitted to the Privacy Officer/designee.
- 4.2 If requester needs assistance with written request. If the requester requires assistance in completing a written request, the DMH/RMHI shall provide assistance. The written request must then be delivered to the Privacy Officer/designee.
- 4.3 Acting on the request. The Privacy Officer/designee must, to the extent possible, provide the requester with an accounting within sixty (60) days after receiving the request. If unable to provide an accounting within that time period, there may be one (1) extension of a maximum of thirty (30) days. The requester must be notified, in writing, of the extension within the sixty (60) day time period. The written notification must state the reason(s) for the delay and give a date of not more than thirty (30) days later in time when the accounting will be provided. A copy of the accounting request and the DMH/RMHI response must be placed in the service recipient's record.
- 4.4 When temporary suspension is needed – verbal notification. If the DMH/RMHI is notified verbally by a health oversight agency as defined in Section 2, or law enforcement official, that making an accounting to the service recipient, former service recipient, or legal representative as defined in Section 2, would impede their activities, the right to an accounting of these disclosures must be suspended for thirty (30) days from the date of the verbal request, unless the health oversight agency or law enforcement official subsequently provides written notice for a longer period. The Privacy Officer/designee must document the verbal request for suspension, including the identity of the health oversight agency or law enforcement official making the statement, place the documentation in the service recipient's record, advise the requester of the request for temporary suspension, and that the right to an accounting of these disclosures will be suspended for thirty (30) days, or longer if the health oversight agency or law enforcement official

subsequently provides written notice for a longer period, from the date of the notification. The requester may be given an accounting of disclosures made to others within the guidelines covered in Section 3. At the conclusion of the temporary suspension, the requester should be given an accounting of disclosures to a health oversight agency or law enforcement official if there had been an accounting that did not include these disclosures due to the temporary suspension.

- 4.5 When temporary suspension is needed – written notification. If the DMH/RMHI is notified in writing by a health oversight agency as defined in Section 2, or law enforcement official, that making an accounting to the service recipient, former service recipient, or legal representative as defined in Subsection 2.3 of this Policy, would impede their activities, the right to an accounting of these disclosures must be temporarily suspended for the period of time stated in the written notification. This type of suspension is limited to the time stated in the notification, but is not subject to other time limitations. The written notification must be filed in the service recipient's record, and the requester must be notified that the right to an accounting of these disclosures has been suspended for the period of time stated in the written notification. The requester may be given an accounting of disclosures made to others within the guidelines covered in Section 3. At the conclusion of the temporary suspension, the requester should be given an accounting of disclosures to a health oversight agency or law enforcement official if there had been an accounting that did not include these disclosures due to the temporary suspension.
- 4.6 Fees. The DMH/RMHI must provide the first accounting, in any twelve (12) month period, without charge. The DMH/RMHI may impose a reasonable cost-based fee for each subsequent request, by the same individual, for an accounting within the same twelve (12) month period provided that: (1) the requester is informed of the fee in advance, and (2) the requester has the opportunity to modify or withdraw the request in order to reduce or avoid the fee.
- 4.7 Creating the accounting. The DMH/RMHI must provide a written accounting of some disclosures of PHI (see Sections 3.3. and 3.4) which occurred during the six (6) year period, or shorter time period if requested, prior to the date of the request for an accounting (date of written request, not date of receipt of written request). The accounting must also include disclosures to or by business associates of the DMH/RMHI. The DMH/RMHI is not required to provide an accounting for disclosures that occurred prior to the HIPAA compliance date of April 14, 2003. The accounting is created using the data entered on the disclosure log (see Section 4.8 for details on creating the disclosure log). The accounting must be in writing and a copy placed in the service recipient's record. For each disclosure appropriate to go in the accounting (see Sections 3.3. and 3.4), provide the following information:

- 4.7.1 The date of the disclosure;
  - 4.7.2 The name of the entity or person who received the PHI and, if known, the address of such entity or person;
  - 4.7.3 A brief description of the PHI disclosed; and
  - 4.7.4 A brief statement of the purpose of the disclosure that reasonably describes the basis for the disclosure.
- 4.8 Documenting all disclosures and the accounting.
- 4.8.1 The Privacy Officer/designee who discloses PHI must document all disclosures on a disclosure log kept in the service recipient's record. A copy of the written request for disclosure must also be placed in the service recipient's record. Disclosures of PHI may also be entered into an easily searchable electronic log. The disclosure log must include:
    - 4.8.1.1 The date of the disclosure;
    - 4.8.1.2 The name of the entity or person who received the PHI and, if known, the address of such entity or person;
    - 4.8.1.3 A brief description of the PHI disclosed; and
    - 4.8.1.4 A brief statement of the purpose of the disclosure that reasonably describes the basis for the disclosure.
  - 4.8.2 All accountings prepared and given to the requester must also be recorded in the disclosure log kept in the service recipient's record.
  - 4.8.3 A copy of the written accounting must also be placed in the service recipient's record.
  - 4.8.4 Written accountings are to be retained for ten (10) years from the date of creation.

## 5. Other Considerations:

### Authority:

Health Information Portability and Accountability Act of 1996; HIPAA Privacy and Security Regulations at 45 CFR §§ 160.103, 164.501, 164.512(k)(2), 164.512(k)(3), 164.512(k)(5), 164.514(e)(2), 164.528, and 164.530(j); Confidentiality of Alcohol and Drug Abuse Patient Records as regulated in 42 CFR Part 2; Tenn. Code Ann. §§ 33-1-101, 33-1-303, and 33-3-104; Tenn. Code Ann. §33-8-202; Tenn. Code. Ann. §§ 34-1-



107(c) and (d); Tenn. Code Ann. §34-5-102; Tenn. Code Ann. §34-6-302; and Tenn. Code Ann. §37-1-102(7).

Approved:

  
\_\_\_\_\_  
Commissioner

  
\_\_\_\_\_  
Date

2/8/2011